

DOCKET FILE COPY ORIGINAL

RECEIVED

JAN 19 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

)

)

Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996

)

)

)

CC Docket No. 96-98

**COMMENTS OF
Z-TEL COMMUNICATIONS, INC.**

Z-Tel Communications, Inc. ("Z-Tel"), by its attorneys, hereby submits its comments in response to the Commission's Further Notice of Proposed Rulemaking¹ and Supplemental Order² in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

Z-Tel is a Tampa, Florida-based integrated communications provider that offers local, long-distance, and enhanced services. Z-Tel presently offers residential customers in New York and Texas a bundled telecommunications package that includes long distance, unlimited local calling, voicemail, caller ID, "follow-me," and a number of other enhanced services. Residential customers also may purchase dial-up Internet access as part of their service package. Z-Tel's business plan calls for providing similar bundles of service throughout the top 100 Metropolitan Statistical Areas by the end of 2001.

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) ("FNRPM").

² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, Supplemental Order, FCC 99-370 (rel. Nov. 24, 1999) ("Supplemental Order").

No. of Copies rec'd
List A B C D E

014

In the FNPRM, the Commission invited “parties to refresh the record on whether requesting carriers may use unbundled dedicated or shared transport facilities in conjunction with unbundled switching to originate or terminate interstate toll traffic to customers to whom the requesting carrier does not provide local exchange service.”³ In response, Z-Tel notes that the plain language of section 251(c)(3) of the Communications Act of 1934, as amended (“Act”), makes unbundled network elements (“UNEs”) available for the provision of any telecommunications service. In other words, the only statutorily permitted use restriction is that UNEs must be used by carriers to provide telecommunications services. As a practical matter, Z-Tel agrees that only the carrier that owns an end user’s local switching may provide local exchange service to that customer. At the same time, however, Z-Tel submits that consumers will not purchase telecommunications services from a carrier unless the carrier is offering the services that the consumer desires. This further suggests that the Commission need not place use restrictions on UNEs, even for UNEs such as local switching and transport.

In the Supplemental Order, the Commission ruled that, on an interim basis, carriers may convert special access facilities to loop-transport combinations only in cases where the carrier provides a “significant amount” of local exchange traffic.⁴ Z-Tel submits that, under this interim approach, the Commission should look to the services provided by the carrier, rather than how the end user utilizes such services in determining whether a loop-transport UNE combination may replace a special access circuit. That is, the provision of local exchange

³ FNPRM, ¶ 496.

⁴ Supplemental Order, ¶ 5.

service to the end user, not the customer's usage pattern, should control any interim restriction on UNEs.

II. SECTION 251(c)(3) DOES NOT PERMIT THE COMMISSION TO IMPOSE USE RESTRICTIONS ON UNES SO LONG AS THEY ARE USED BY TELECOMMUNICATIONS CARRIERS TO PROVIDE ONE OR MORE TELECOMMUNICATIONS SERVICES

The plain language of section 251(c)(3) requires incumbent local exchange carriers ("LECs") to make available UNEs to requesting telecommunications carriers to provide telecommunications services of the requesting carrier's choosing. Section 251(c)(3) imposes on incumbent LECs the duty to:

provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.⁵

Interpreting this section, the Commission has concluded that "section 251(c)(3) provides that requesting telecommunications carriers may seek access to unbundled elements to provide a 'telecommunications service,' and exchange access and interexchange services are telecommunications services."⁶ Indeed, the Commission has determined this "interpretation of section 251(c)(3) [to be] compelled by the plain language of the 1996 Act."⁷

⁵ 47 U.S.C. § 251(c)(3).

⁶ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 356 (1996) ("First Report and Order") (subsequent history omitted) (citations omitted).

⁷ *Id.*

The Commission's rules follow from the Act's mandate that a telecommunications carrier may use UNEs to provide any telecommunications service. Section 51.309, in relevant part, provides:

(a) An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.

(b) A telecommunications carrier purchasing access to an unbundled network element may use such network element to provide exchange access services to itself in order to provide interexchange services to subscribers.⁸

In other words, the Act and the Commission's implementing rules make clear that telecommunications providers have the discretion to determine which services they provide over UNEs purchased from incumbent LECs.⁹

At bottom, "[t]he only limitation that the statute imposes on the definition of a network element is that it must be 'used in the provision of a telecommunications service.'"¹⁰

The Act permits no other use restrictions.

⁸ 47 C.F.R. § 51.309.

⁹ The ability to utilize UNEs to provision both local and exchange access services must apply without restriction to loops, unbundled switching, and shared and dedicated transport.

¹⁰ First Report and Order, ¶ 261.

III. CUSTOMERS, NOT CARRIERS, DICTATE THE SERVICES RECEIVED

Aside from the statutory requirement that carriers use UNEs to provide telecommunications services, the Act permits no restrictions on the use of UNEs. At the same time, however, the Commission has recognized that, as a practical matter, a carrier utilizing UNEs would be unlikely to obtain customers unless it offers them the telecommunications services that the customers need.¹¹ Z-Tel agrees with this position, and submits that customers – not carriers – dictate the services that are provided to satisfy their individual telecommunications needs.

As one example, Z-Tel notes that it presently utilizes incumbent LEC local switching to provide local exchange, exchange access, interexchange, and related services to residential customers. The local switching UNE that Z-Tel purchases includes a switch port that is dedicated to each individual customer. By controlling the switch port dedicated to the end user, Z-Tel has the ability – from a technical standpoint – to control all services that an end user receives. As the Commission has noted:

a carrier that purchases the unbundled switching element to serve an end user effectively obtains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service, for that end user. A practical consequence of this determination is that the carrier that purchases the local switching element is likely to provide all available services requested by the customer served by that switching element, including switching for local exchange and exchange access.¹²

¹¹ *Id.*, ¶ 357.

¹² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, Order on Reconsideration, 11 FCC Rcd 13042, ¶ 11 (1996) (subsequent history omitted).

Put another way, Z-Tel, as a purchaser of local switching, controls the services that its end users receive. At the same time, however, if Z-Tel is not offering to its customers the services desired – or if taking Z-Tel services prevents a customer from obtaining other needed telecommunications services – customers have the option of “voting with their feet” by moving to a carrier that does enable the end user to obtain the desired service.

IV. ANY UNE RESTRICTION IMPOSED BY THE COMMISSION – EVEN ON AN INTERIM BASIS – SHOULD LOOK TO WHAT THE CARRIER PROVIDES, RATHER THAN THE END USER’S USAGE PATTERN

In Z-Tel’s view, the Act does not permit the Commission to restrict the use of UNEs used by telecommunications carriers to provide telecommunications services. Moreover, use restrictions on UNEs would serve no consumer benefit – consumers, through their ability to make carrier selections, determine what services are provided over the elements that are used to provide their services. The Commission, however, on an interim basis, has ruled that carriers may convert special access facilities to loop-transport UNE combinations only in cases where the carrier provides a “significant amount” of local exchange traffic.¹³ With regards to this interim restriction, Z-Tel submits that the Commission should look to the services a carrier provides to

¹³ Supplemental Order, ¶ 5.

end users, rather than an end user's usage pattern, in determining if a carrier is providing a significant amount of local traffic.¹⁴

As noted above, Z-Tel provides a bundle of local exchange, exchange access, and interexchange services to its end users. Although Z-Tel provides all of these services to its end users, Z-Tel does not control how an end user utilizes these services. For example, some of Z-Tel's end users may make no local exchange calls over a given period of time, and instead may make only interexchange calls. Other Z-Tel end users may make no interexchange calls over a given period of time, and instead may make only local exchange calls. The point is, Z-Tel can control only the services that are provided to an end user – not how the end user utilizes such services. Thus, any usage restriction placed on UNEs should look to what services the carrier provides to the end user, rather than how the end user utilizes those services.

V. CONCLUSION

For the foregoing reasons, Z-Tel submits that the Act, as confirmed by the Commission's implementing rules, does not permit restrictions on UNEs utilized by telecommunications carriers to provide telecommunications services. Regarding the Commission's interim restriction on special access-to-UNE conversions, Z-Tel recommends that

¹⁴ Z-Tel notes that for redundancy purposes, some customers prefer to have multiple providers for telecommunications services. If service is disrupted on one carrier's network, another carrier's network can serve as a backup. Moreover, customers utilizing competitive local exchange service for the first time may not want to convert all of their local exchange service to an unproven carrier. To protect competitors and consumers in these situations, Z-Tel recommends that the Commission avoid all-encompassing language, such as its statement that a "carrier is providing significant local exchange service if the requesting carrier is providing all of the end user's local exchange service." Supplemental Order, n.9.

the "significant local exchange service" test should look to the services provided by the telecommunications carrier, rather than how an end user utilizes such telecommunications services.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ruth Milkman', written over a horizontal line.

Ruth Milkman
Michael B. Hazzard
Lawler, Metzger & Milkman, LLC
1909 K Street, NW, Suite 820
Washington, D.C. 200036

Counsel to Z-Tel Communications, Inc.

January 19, 2000